

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILLIAM SLAVOSKI, and
JASON SLAVOSKI

Plaintiffs

v.

DION FERNANDES, and
LEONARD GALLI

Defendants

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3:CV-05-0646
(CHIEF JUDGE VANASKIE)

ORDER

NOW, THIS 29th DAY OF JUNE, 2005, having carefully considered Defendants' Motion to Dismiss along with the memoranda of law presented by counsel, but excluding the Verified Statement of Defendant Dion Fernandes, which is not properly presented on a Motion to Dismiss submitted pursuant to Fed. R. Civ. P. 12(b)(6) before any discovery has been undertaken, **IT IS HEREBY ORDERED THAT:**

1. Because the prosecution of defendant William Slavoski was not accompanied by any seizure of his person or deprivation of his liberty sufficient to support a civil rights claim of malicious prosecution, see Dibella v. Borough of Beachwood, 407 F.3d 599, 602 (3d Cir. 2005), Plaintiff William Slavoski's Fourth Amendment malicious prosecution claim is **DISMISSED**.

2. Because a malicious prosecution claim may not be premised upon the substantive component of the Fourteenth Amendment due process clause, see Albright v. Oliver, 410 U.S. 266, 272 (1994); Merkle v. Upper Dublin School District, 211 F.3d 782, 792 (3d Cir. 2000), Plaintiff William Slavoski's Fourteenth Amendment malicious prosecution claim is **DISMISSED**.
3. In all other respects, Defendants' Motion to Dismiss (Dkt. Entry 10) is **DENIED**.
4. Defendants shall file an Answer to the Complaint within **twenty (20) days** from the date of this Order.

s/ Thomas I. Vanaskie
Thomas I. Vanaskie, Chief Judge
Middle District of Pennsylvania